

UNITED STATES TAX COURT
WASHINGTON, DC 20217

ANDREW M. ROSS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 19691-10S.
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent)	
)	
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)	
)	

ORDER

This case is presently calendared for trial at the Court's trial session commencing October 10, 2012, in Peoria, Illinois.

On September 13, 2012, petitioner filed a Motion To Continue Trial. The Court then directed respondent to file an objection or other response to petitioner's motion on or before October 5, 2012; the Court also calendared petitioner's motion for hearing on October 10, 2012, in Peoria, Illinois. Respondent complied with the Court's order by filing a Notice Of Objection to petitioner's motion on September 27, 2012; respondent also filed a pre-trial memorandum on that same date.

In his motion, petitioner requests a continuance on the ground that "the Department of Justice seized all of the tax records that I had pertaining to the case on 4-12-11 [and that] after multiple attempts via my attorney all requests [for the return of such records] have been ignored at this time." As exhibits to his motion petitioner attached, inter alia, a copy of a Search And Seizure Warrant dated April 11, 2011, issued by a magistrate judge of the United States District Court for the Central District of Illinois that authorized the search of a building owned and/or used by petitioner in Springfield, Illinois and the seizure of, inter alia, all business records (specifically including all tax and client records), all computers and computer-related equipment, and all computer hardware and software (specifically including all internal and peripheral storage devices). Also attached as an exhibit to the motion was a 4-page inventory prepared by agents of the Federal Bureau of Investigation of items seized from petitioner's premises on April 12, 2011, pursuant to the search and seizure warrant.

In his Notice Of Objection to petitioner's motion, respondent does not contradict the statements that petitioner's records were seized by the FBI and that those records have yet to be returned to him. Rather, respondent offers to make available "a large amount of documentation that petitioner produced during the original audit" and suggests that this documentation should suffice for trial next month in Peoria. Yet in his pre-trial memorandum respondent states that "To date, petitioner has not provided sufficient documentation to support the disallowed

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deductions under either the Cohan rule or I.R.C. sec. 274 [and that] Petitioner's failure to maintain adequate records and fully substantiate the deductions claimed for the 2006, 2007, and 2008 taxable years constitutes negligence under I.R.C. sec. 6662." Thus, respondent contends that petitioner's previously-furnished documentation is inadequate, but respondent leaves unanswered petitioner's assertion that such documentation, when supplemented by petitioner's seized records, would be sufficient for petitioner to satisfy his burden. Under these circumstances, the Court concludes that no useful purpose would be served by delaying action on petitioner's motion and that the continuance of this case is warranted. Accordingly, it is hereby

ORDERED that petitioner's Motion To Continue Trial, filed September 13, 2012, is stricken for hearing from the Court's October 10, 2012 Peoria, Illinois trial session. It is further

ORDERED that petitioner's Motion To Continue Trial, filed September 13, 2012, is granted, and this case is (1) stricken for trial from the Court's October 10, 2012 Peoria, Illinois trial session and (2) continued generally.

The parties are advised that if not sooner settled, this case will, in due course and upon written notice, be re-calendared for trial at a future trial session in Peoria, Illinois.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Dated: Washington, D.C.
September 28, 2012